

Award No. 6862

Docket No. CLX-6906

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

RAILWAY EXPRESS AGENCY, INC.

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

(a) The Agreement governing hours of service and working conditions between the Railway Express Agency, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective September 1, 1949, was violated in the Mississippi Division Train Service Seniority District, February 6, 1953 when regularly established Messenger Service Maintained on Illinois Central Railroad Trains 47 and 48, Fulton, Kentucky-Jackson, Tennessee Route, was allegedly abolished and the work turned over to employees of the Motor Express Rentals Corporation of Chicago, Illinois, who hold no rights under the Agreement;

(b) The work shall now be restored under the scope and operation of the Agreement; and

(c) Train Service Employee George C. Moore, and all other employees adversely affected, shall be compensated for salary and earnings loss sustained retroactive to and including February 9, 1953.

EMPLOYEES' STATEMENT OF FACTS: During the period of the contractual relations beginning February 15, 1920 between Railway Express Agency and/or its predecessor companies and the Brotherhood of Railway and Steamship Clerks, Train Messenger Service has been established and maintained between Fulton, Kentucky and Jackson, Tennessee. February 6, 1953 such service was maintained on Illinois Central Railroad Trains 47 and 48, with two Messengers operating as follows:

First day, report Fulton, Train 47, 6:20 A.M.
Released Jackson, 12:30 P.M.

Second day, report Jackson, Train 48, 12:40 P.M.
Released Fulton, 7:30 P.M.

precedent decisions, requiring the Agency to perform service which is not its obligation but the obligation of the railroad company. A contrary award holding that employes of the Agency are entitled to perform the service furnished by the Illinois Central Railroad through its third party contractor, the Motor Express Terminals Corporation, would amount to an award impossible of performance.

All evidence and data set forth have been considered by the parties in correspondence and in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to February 6, 1953, the inter-city transportation of express for local points on the Illinois Central Railroad between Fulton, Ky., and Jackson, Tenn., was provided Railway Express Agency, hereinafter referred to as the Agency, by such railroad in a baggage car attached to local freight trains, Nos. 47 and 48 with two Express Messengers assigned to the route, who were employes of the Agency and covered by terms of an existing Agreement between the parties. This train Messenger service, it may be added, had been thus established and maintained on such route under similar conditions and circumstances for a period of some thirty years, by the Agency or its predecessors, The American Railway Express Company, during which time seven different agreements were in effect, the current Agreement being effective September 1, 1949.

On the date first above mentioned the railroad discontinued operation of the baggage car on the involved route after having advised the Agency that thereafter there would be no provision in effect for the handling of express on its freight or local freight trains between Jackson and Fulton but that it was handling the matter to provide space in over the road trucks for handling express. This was eventually procured by contracting with the Motor Express Rentals Corporation.

Following receipt of the foregoing information the Agency abolished the involved two Messenger positions and, when the truck service furnished by the railroad commenced operations on February 9, 1953, transferred the work of handling its express traffic between Jackson and Fulton and all intermediate points, theretofore performed by its employes, to the Motor Express Rentals Corporation, which has since continued to perform such work with employes having no rights under the Agreement existing between the petitioner and the Agency. Shortly after transfer of the work of handling the Agency's express traffic as herein related the Organization filed a claim on the property charging that such action was resulting in a violation of the Agreement and asking that such work be restored to employes of the Agency under its terms. When it was denied the instant claim was promptly progressed to this Division of the Board.

Except for differences in the heretofore related factual situation of no consequence to the merits of the dispute the issues raised, the contentions advanced, the decisions relied on as controlling precedents, and the principles involved in this case are the same as those considered, discussed and disposed of by our decision in Award No. 6861, this day decided. Indeed, the parties themselves concede that for all practical purposes this case is governed by the decision and Award in that case.

Therefore, based on what is said and held in Award No. 6861 we hold that the handling of the express work in question was transferred by the Agency to the Motor Express Rentals Corporation in violation of the existing collective bargaining Agreement between the parties, that such work should be restored to the scope and operation of the current Agreement, and that the instant Claim must be upheld.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agency violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 31st day of January, 1955.

DISSENT TO AWARD No. 6862, DOCKET CLX-6906

The majority in this case, by ignoring certain salient facts of record, has committed grievous error in its findings and conclusions. Despite voluminous evidence of record filed with the Board, and the oral argument made before the Referee, the majority has failed to grasp the relationship of Railway Express Agency to the railroads generally. It will suffice to state here that the majority mistakenly gained the impression that the Agency had the free and untrammelled right to conduct all aspects of the express business, including the inter-city transportation of express, whereas in fact it could not perform inter-city transportation except by consent of the railroads who would participate in such transportation under the terms of the Uniform Express Operations Agreement.

The Award as rendered is impossible of performance. In order to apply it in accordance with the Opinion and Findings this Board would have had to have jurisdiction over the Railroad concerned in this proceeding, which it did not have. There is no court or other forum that could enforce this Award. The findings and conclusions of the majority are not only contrary to the facts in this case but find no support in law or under prior awards of this Division of the National Railroad Adjustment Board. For these reasons, therefore, we dissent.

/s/ R. M. Butler
/s/ W. H. Castle
/s/ J. E. Kemp
/s/ C. P. Dugan
/s/ E. T. Horsley